

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CAROL D. CARTER,

Plaintiff,

VS.

SOCIAL SECURITY ADMINISTRATION,

Defendants.

Case No. 2:14-cv-1825-MMD-GWF

ORDER

This matter is before the Court on Plaintiff's Amended Complaint (#3), filed on March 9,

BACKGROUND

Plaintiff brings an Amended Complaint seeking judicial review of her disability case. She claims she cannot work and does not have any income with which to support herself. Her first Complaint in this matter was dismissed with leave to amend on February 12, 2015 (#2).

I. Screening the Complaint

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a Defendant/Third Party Plaintiff who is immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint, or portion thereof, should be dismissed for failure to state a claim upon which relief may be granted “if it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claims that would entitle him to relief.” *Buckey v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992). A complaint may be dismissed

1 as frivolous if it is premised on a nonexistent legal interest or delusional factual scenario. *Neitzke*
 2 v. *Williams*, 490 U.S. 319, 327–28 (1989). Moreover, “a finding of factual frivolousness is
 3 appropriate when the facts alleged rise to the level of the irrational or the wholly incredible,
 4 whether or not there are judicially noticeable facts available to contradict them.” *Denton* v.
 5 *Hernandez*, 504 U.S. 25, 33 (1992). When a court dismisses a complaint under § 1915(e), the
 6 plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies,
 7 unless it is clear from the face of the complaint that the deficiencies could not be cured by
 8 amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

9 **II. Instant Complaint**

10 Plaintiff submits a complaint requesting judicial review of her disability claim. She lists a
 11 myriad of physical ailments that she would like the Court to review to make a determination in her
 12 disability case. The awarding of disability payments is not a judicial process, but an administrative
 13 one. The Plaintiff is required to show that her administrative remedies have been exhausted before
 14 seeking judicial review of her claim. The Ninth Circuit has held that a plaintiff must exhaust her
 15 administrative remedies before bringing a civil action.

16 Section 405(g) provides that a civil action may be brought only after
 17 (1) the claimant has been party to a hearing held by the Secretary, and
 18 (2) the Secretary has made a final decision on the claim. To obtain a
 19 hearing, the claimant must (1) present a claim to the Secretary and
 20 obtain an initial determination (20 C.F.R. § 404.900(a)(1)); (2) seek
 21 reconsideration (20 C.F.R. §§ 404.900(a)(2), 404.909, 404.920); and
 22 (3) after reconsideration, request a hearing before an administrative
 23 law judge (20 C.F.R. §§ 404.900(a)(3), 404.933). The decision made
 24 following the hearing does not become the final decision of the
 25 Secretary until the claimant requests review by the appeals council,
 26 and the appeals council either grants or denies review. 20 C.F.R. §§
 27 404.900(a)(5), 404.955, 404.981.”

28 *Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989).

29 Plaintiff has not demonstrated in her Amended Complaint that a hearing by the
 30 Commissioner was had regarding her case, that she sought reconsideration of the Commissioner’s
 31 denial of her claim, that she requested a hearing before an Administrative Law Judge, or that she
 32 appealed the decision to the Appeals Council. Therefore, the Court cannot determine if it has
 33 jurisdiction over the Plaintiff’s civil action at this time. The Court will dismiss the Plaintiff’s
 34

1 Amended Complaint with leave to amend in order to allow the Plaintiff to properly demonstrate
2 that this Court has jurisdiction over her claim.

3 If Plaintiff elects to proceed in this action by filing an amended complaint, she is informed
4 that the court cannot refer to a prior pleading in order to make her amended complaint complete.
5 Local Rule 15-1 requires that an amended complaint be complete in itself without reference to any
6 prior pleading. This is because, as a general rule, an amended complaint supersedes the original
7 complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.1967). Once Plaintiff files an amended
8 complaint, the original pleading no longer serves any function in the case. Therefore, in an
9 amended complaint, as in an original complaint, each claim and the involvement of each defendant
10 must be sufficiently alleged. Accordingly,

11 **IT IS HEREBY ORDERED** that Plaintiff's Amended Complaint (#3) be **dismissed**
12 without prejudice with leave to amend. Plaintiff shall have until **July 6, 2015** to file an amended
13 complaint correcting the noted deficiencies.

14 DATED this 4th day of June, 2015.

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16 
17 GEORGE FOLEY, JR.
United States Magistrate Judge